

BRUCE A. BEHRENS, Chief Counsel
DAVID GOSSAGE, Deputy Chief Counsel
LUCILLE Y. BACA, Assistant Chief Counsel
JANET WONG, Bar No.124272
LOIS H. YOSHIDA, Bar No. 162000
595 Market Street, Suite 1700, San Francisco, CA 94105
Mail: P.O. Box 7444, San Francisco, CA 94120-7444
Telephone: (415) 904-5700, Facsimile: (415) 904-2333

Attorneys for Defendant STATE OF CALIFORNIA,
DEPARTMENT OF TRANSPORTATION

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ROHNERT PARK CITIZENS TO ENFORCE
CEQA, and DOES 1 through 5, inclusive

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION; UNITED STATES
DEPARTMENT OF TRANSPORTATION;
FEDERAL HIGHWAY ADMINISTRATION;
and, DOES 6 through 10, inclusive,

Defendants.

Civil No. C 07 4607 TEH

**DECLARATION OF JANET WONG
IN SUPPORT OF DEFENDANT
STATE OF CALIFORNIA
DEPARTMENT OF
TRANSPORTATION'S REPLY IN
SUPPORT OF MOTION TO DISMISS
[FRCP RULE 12(b)(1)]**

Hearing Date: June 2, 2008

Hearing Time: 10:00 A.M.

Judge: Hon. Thelton E. Henderson

I, JANET WONG, declare as follows:

1. I am an attorney duly admitted to practice before the United States District Court, Northern District of California and before the courts of the State of California. I am employed as an attorney by the California Department of Transportation, Legal Division, counsel of record for Defendant STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION'S ("State") on whose behalf I make this declaration. If called as a witness, I would and could competently testify to the following facts, all of which are within my personal knowledge, except as to those matters based upon information and belief, and on that basis allege them to true and accurate.

2. This declaration is made in support of the State's Reply in support of its Motion to Dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

3. On October 22, 2007, I sent a letter to Ms. Rose Zoia, counsel of record for Plaintiff. My letter advised that as of October 22, the State of California Department of Transportation ("Department") had not been served with summons and complaint. My letter enclosed a copy of the State of California, Department of Justice's September 12, 2007 letter to Ms. Zoia, which enclosed Plaintiff's summons and complaint and explained that the Department of Justice was not authorized to accept service on behalf of the Department. After stating that service of all legal documents on the Department should be done through my San Francisco legal offices, my letter advised Ms. Zoia of the Department's intent to file a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) on sovereign immunity grounds. A true and correct copy of my October 22, 2007 letter to Ms. Zoia is attached to this declaration as Exhibit "A."

4. I subsequently received Mr. Zoia's letter of November 7, 2007. Ms. Zoia advised of her willingness to personally serve my San Francisco legal offices and provided Plaintiff's preliminary analysis of the Department's anticipated Rule 12(b)(1) motion to dismiss. A true and correct copy of Ms. Zoia's November 7, 2007 is attached to this declaration as Exhibit "B."

5. In consideration of the Department's agreement to execute a Waiver of Service of Summons, Plaintiff agreed that the Department's initial responsive pleading would be due 60 days from the date of execution. A true and correct copy of Ms. Zoia's November 14, 2007 letter reflecting Plaintiff's agreement to the 60 days and the executed Waiver of Service of Summons are attached to this declaration as Exhibit "C."

6. As a result of this Court's December 18, 2007 Case Management Order, the parties subsequently met and conferred. The State agreed to defer the filing of its Rule 12(b)(1) motion to dismiss on sovereign immunity grounds until after the mediation had been completed and Plaintiff agreed not to take the default of the State in the interim. The State also advised that it would file its motion and set a hearing after the mediation sessions had concluded. A true and correct copy of the Court's December 18, 2007 Order and my January 4, 2008 letter confirming the State and Plaintiff's agreement are attached to this declaration as Exhibit "D."

1 7. Counsel met and conferred and agreed to delay the motion as shown in the attached
2 emails. A true and correct copy of those emails is attached to this declaration as Exhibit "E."

3 8. Counsel for Petitioners also agreed that the mediation should be completed prior to
4 the Sate filing a motion to dismiss. This was reflected on the email of January 2, 2008 of 3:00
5 p.m. from Rose Zoia to all counsel. Attached as Exhibit "E" to this declaration is a true and
6 correct copy of the State's email of January 2, 2008 suggesting a postponement of the motion, Ms.
7 Zoia's reply and State's response of the same date.

8 9. Without waiver of the State's right to bring its motion, I attended the March 31,
9 2008 Case Management Conference, during which the Court allowed me to personally serve a
10 copy of the State's motion to Ms. Zoia and to counsel for the federal defendants, Charles M.
11 O'Connor. At that time, I also handed to the Court a courtesy copy of the notice, memoranda of
12 points and authorities, declaration and proposed form of order.

13 I declare under penalty of perjury that the foregoing is true and correct.

14 Executed this 19th day of May 2008, at San Francisco, California

15
16
17 
18 JANET WONG

EXHIBIT A

STATE OF CALIFORNIA- BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION

595 MARKET STREET, SUITE 1700

SAN FRANCISCO, CA 94105

P. O. BOX 7444, SAN FRANCISCO, CA 94120-7444

PHONE (415) 904-5700

FAX (415) 904-2333

TTY 711



*Flex your power!
Be energy efficient!*

October 22, 2007

Rose Zoia

50 Old Courthouse Square, Suite 600

Santa Rosa, CA 95404

In re: Rohnert Park Citizens to Enforce CEQA v. *STATE OF CALIFORNIA*
United States District Court for the North District of California, No. USCD C07
4607 TEH

Dear Ms. Zoia:

This office represents the California Department of Transportation (the Department). We were informed that you filed a federal action naming the Department as a defendant, and attempted service of Summons and Complaint on the Department at the Department of Justice. On September 12, 2007, the Department of Justice sent you the attached letter returning the Summons and Complaint as it was not authorized to accept service on behalf of the Department of Transportation in this case. To date, the Department has not been served with Summons and Complaint. Service of all legal documents on the Department should be done through this office in this matter, and not through Caltrans District 4 in Oakland or the Office of the Attorney General. Please call me if you have any questions about service.

In addition, we anticipate that we will be filing a motion to dismiss the Department in this case under Federal Rules of Civil Procedure 12(b)(1) on the grounds of sovereign immunity. We request that you dismiss the Department in this federal action so that we would not have to spend additional resources of the parties and the court on this motion.

I look forward to discussing these matters with you. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Janet Wong'.

Janet Wong
Deputy Attorney

Enclosure

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555

September 12, 2007

Rose M. Zola
50 Old Courthouse Square
Suite 600
Santa Rosa, CA 95404

RE: RETURN OF DOCUMENTS DELIVERED TO THE DEPARTMENT
OF JUSTICE, 1300 I STREET, SACRAMENTO, CALIFORNIA 95814

Dear Ms. Zola:

Summon and Complaint for Declaratory, Mandamus, and Injunctive Relief...
Rohnert Park v. California Department of Transportation, et al.; USCD C07 4607 TEH

We are returning these documents for the following reasons:


XXX1. These documents were delivered to the Department of Justice in error. We are not authorized to receive or accept documents on behalf of the party you are trying to serve.

_____2. The documents are defective in that they do not state the name of the party being served.

_____3. We have received delivery of the documents only on behalf of (name of entity). We cannot receive or accept delivery of documents for individuals or other entities named in your complaint. These documents are being returned to you to effect proper service.

_____4. Other:

Sincerely,


Pamela Russell
Legal Analyst

For EDMUND G. BROWN JR.
Attorney General

EXHIBIT B

JYW
Rose M. Zoia
Attorney

50 Old Courthouse Square, Suite 600
Santa Rosa, California 95404
707.526.5894 . fax 707.526.5895
rzoia@sbcglobal.net

November 7, 2007

Janet Wong
Deputy Attorney
Department of Transportation
Legal Division
595 Market Street, Suite 1700
San Francisco CA 94120-7444

RE: *Rohnert Park Citizens to Enforce CEQA v. California Department of Transportation, et al.* (Wilfred Avenue Interchange Project), U.S.D.C. No. C074607THE

Dear Ms. Wong:

I am in receipt of your letter dated October 22, 2007. As you know, the above-referenced lawsuit filed in federal court challenges Caltrans actions relative to the Wilfred Avenue Interchange Project as violations of the California Environmental Quality Act (CEQA). It further alleges Caltrans violated the California Public Records Act. The lawsuit names the Federal Highway Administration based on its actions on the project in violation of the federal National Environmental Policy Act (NEPA) and the federal Administrative Procedures Act (APA).

On September 13, 2007, RPCEC served Caltrans by personal service on Alex Wasser, Office of the Attorney General, at 1300 I Street, Sacramento. A copy of the Proof of Service of Summons is enclosed. As you note, those documents were returned. We also ordered service by One Legal, Inc. on Caltrans behalf by service on the Office of the Attorney General at 455 Golden Gate in San Francisco. Upon inquiry at One Legal, I was informed that the order was unilaterally "cancelled" by One Legal, without authorization. One Legal is in the process of "investigating" the unauthorized cancellation; I am awaiting the explanation. Given that, I will have Caltrans served either personally at 595 Market Street, Suite 1700, per your letter, or perhaps you will agree to waive service pursuant to Federal Rules of Civil Procedure, Rule 4(d). Please let me know as soon as possible either via email or telephone. In any event, a notice of the action and request to waive and waiver form are enclosed.

Letter to Janet Wong
November 7, 2007
Page 2

Your letter further states that you anticipate filing a motion to dismiss Caltrans "on the grounds of sovereign immunity." I know of no statutory, case, or other law that grants Caltrans, as a lead agency, sovereign immunity from suits alleging CEQA violations. (See, e.g., *City of South Pasadena v. Goldschmidt* (1981) 637 F.2d 677 ("CEQA's provisions supplement Caltrans' responsibilities under the state highway laws. [Cite] Caltrans had the task of complying with CEQA's requirements, both procedural and substantive. It was therefore obligated to consider alternatives and mitigate adverse consequences. Those obligations are meaningless without the power to select an alternate project.))

Caltrans is properly named in this case brought in federal court under the doctrine of supplemental jurisdiction. That doctrine, codified in 28 USC § 1367, subd. (a), provides that as long as the complaint sets forth a claim arising under federal law, the district court may adjudicate state law claims that are transactionally related to the federal claim. (See also *Nolan v. Boeing Co.* (5th Cir. 1990) 919 F.2d 1058, 1063.) Before enactment of the above statute, the same jurisdictional doctrine was recognized by case law and called "pendent jurisdiction." The rationale was that "considerations of judicial economy, convenience and fairness to the litigant" gave a court with jurisdiction over a federal claim the power to determine related state law claims joined by the plaintiff. (*United Mine Workers of America v. Gibbs* (1966) 383 U.S. 715, 726.)

There is no question that the district court has jurisdiction over the NEPA and APA claims brought against the FHA. The same factual background – actions relative to the Wilfred Avenue Interchange Project – provides the basis for the state law CEQA claims against Caltrans. The claims are factually interdependent. Therefore, notions of judicial economy, convenience and fairness to the litigant gives the district court jurisdiction over the state law claims against Caltrans. This should alleviate any proposed motion to dismiss.

On a related note, as you know CEQA requires that, within 20 days of service with the petition or complaint, the respondent agency must file a notice of a settlement meeting to be held within 45 days of service. (Pub. Resources Code § 21167.8, subd. (a)) Once formal service is effected, we look forward to a prompt notice. My client representative and I are available November 15, 19, and 20 in the mornings, and generally during the weeks of November 26th and December 3rd.

In addition, RPCEC elected to prepare the record of proceedings in this case. We acquired project documents, albeit incomplete, via the PRA request and recently acquired federal agency documents via a FOIA request. We

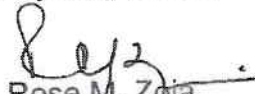
Letter to Janet Wong
November 7, 2007
Page 3

anticipate creating an index of the documents and forwarding it to you and the FHA for review and comment so that the agencies can certify the record. In that regard, we propose the following procedural schedule in this case, notwithstanding the settlement meeting, as discussed above:

11/23	index of proposed record documents to agencies
11/30	copy of proposed record documents to agencies
12/14	agencies' comments on proposed record, with additions or omissions
12/21	agencies' certification and lodgment of record
2/1	opening brief (taking into account two week holiday period)
2/29	opposition briefs
3/21	reply briefs

We look forward to hearing from you on these issues.

Very truly yours,


Rose M. Zola

cc: Rohnert Park Citizens to Enforce CEQA
U.S. Attorney's Office Northern District of California

EXHIBIT C

Rose M. Zoia
Attorney

50 Old Courthouse Square, Suite 600
Santa Rosa, California 95404
707.526.5894 . fax 707.526.5895
rzoia@sbcglobal.net

November 14, 2007

Janet Wong
Deputy Attorney
Department of Transportation
Legal Division
595 Market Street, Suite 1700
San Francisco CA 94120-7444

RE: *Rohnert Park Citizens to Enforce CEQA v. California Department of Transportation, et al.* (Wilfred Avenue Interchange Project), U.S.D.C. No. C074607THE

Dear Ms. Wong:

Thank you for your phone message yesterday, and thank you for agreeing to waive service pursuant to Federal Rules of Civil Procedure, Rule 4(d). Per your phone message, it is fine with me that the 60 days commences from the date you sign the waiver.

Very truly yours,


Rose M. Zoia

cc: Rohnert Park Citizens to Enforce CEQA
Charles O'Connor, Assistant U.S. Attorney

1 Rose M. Zoia ♦ sbn 134759
2 Law Office of Rose M. Zoia
3 50 Old Courthouse Square, Suite 600
4 Santa Rosa CA 95404
5 ph 707.526.5894
6 fax 707.526.5895
7 Attorneys for Plaintiff

8 **UNITED STATES DISTRICT COURT FOR**
9 **THE NORTHERN DISTRICT OF CALIFORNIA**

10
11 ROHNERT PARK CITIZENS TO
12 ENFORCE CEQA, and DOES 1 through 5,
13 inclusive,

14 Plaintiff,

15 v.

16 CALIFORNIA DEPARTMENT OF
17 TRANSPORTATION, UNITED STATES
18 DEPARTMENT OF TRANSPORTATION,
19 FEDERAL HIGHWAY ADMINISTRATION,
20 and DOES 6 through 10, inclusive,

21 Defendants.
22
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CASE NUMBER 07 4607
THE

**WAIVER OF SERVICE OF
SUMMONS**

1
2 TO: Rose M. Zoia, counsel for plaintiff

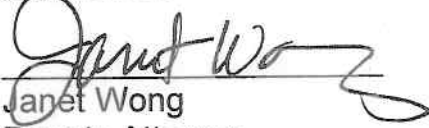
3 I acknowledge receipt of your request that I waive service of a summons in
4 the action of *Rohnert Park Citizens to Enforce CEQA v. California Department of*
5 *Transportation, et al.*, which is case number C074607THE in the United States
6 District Court for the Northern District of California. I have also received a copy of
the complaint in the action, two copies of this instrument, and a means by which I
can return the signed waiver to you without cost to me.

7 I agree to save the cost of service of a summons and an additional copy of
8 the complaint in this lawsuit by not requiring that I or the California Department of
Transportation be served with judicial process in the manner provided by Rule 4.

9
10 I and the California Department of Transportation will retain all defenses or
11 objections to the lawsuit or to the jurisdiction or venue of the court except for
objections based on a defect in the summons or in the service of the summons.

12 I understand that a judgment may be entered against me or the California
13 Department of Transportation if an answer or motion under Rule 12 is not served
upon you within 60 days after November 7, 2007.

14 Date: November 14, 2007

15 
16 Janet Wong
17 Deputy Attorney
California Department of Transportation

18 Duty to Avoid Unnecessary Costs of Service of Summons

19
20 Rule 4 of the Federal Rules of Civil Procedure requires certain parties to
21 cooperate in saving unnecessary costs of service of the summons and complaint.
22 A defendant located in the United States who, after being notified of an action and
23 asked by a plaintiff located in the United States to waive service of a summons,
fails to do so will be required to bear the cost of such service unless good cause
be shown for its failure to sign and return the waiver.

24 It is not good cause for a failure to waive service that a party believes that
25 the complaint is unfounded, or that the action has been brought in an improper
26 place or in a court that lacks jurisdiction over the subject matter of the action or
27 over its person or property. A party who waives service of the summons retains all
28 defenses and objections (except any relating to the summons or to the service of
the summons), and may later object to the jurisdiction of the court or to the place
where the action has been brought.

1 A defendant who waives service must within the time specified on the
2 waiver form serve on the plaintiff's attorney a response to the complaint and must
3 also file a signed copy of the response with the court. If the answer or motion is
4 not served within this time, a default judgment may be taken against that
5 defendant. By waiving service, a defendant is allowed more time to answer than if
6 the summons had been actually served when the request for waiver of service
7 was received.
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EXHIBIT D

DEPARTMENT OF TRANSPORTATION

LEGAL DIVISION

595 MARKET STREET, SUITE 1700
SAN FRANCISCO, CA 94105
P. O. BOX 7444, SAN FRANCISCO, CA 94120-7444
PHONE (415) 904-5700
FAX (415) 904-2333
TTY 711



*Flex your power!
Be energy efficient!*

January 4, 2008

Via Facsimile and U.S. Mail
(707) 526-5895

Ms. Rose Zoia
Law Offices of Rose M. Zoia
50 Old Courthouse Square, Suite 401
Santa Rosa, CA 95404

In re: *Rohnert Park Citizens to Enforce CEQA v. STATE OF CALIFORNIA*
United States District Court for the North District of California,
Case No. USCD C07 4607 TEH

Dear Ms. Zoia:

Based on the Court's December 18, 2007 Case Management Order and in the interests of judicial economy, our meet and confer discussion resulted in and agreement that the State will not file its motion to dismiss or any other responsive pleading until after the early mediation is concluded. Petitioners have also agreed that they will not take the default of the State in the meantime. If necessary, the State will file its motion to dismiss and set a hearing after concluding the mediation sessions. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Janet Wong".

Janet Wong
Deputy Attorney

cc: Charles O'Connor
Assistant U.S. Attorney

MESSAGE CONFIRMATION

JAN-04-2008 01:52 PM FRI

FAX NUMBER :
NAME :

NAME/NUMBER : 917075265895
PAGE : 1
START TIME : JAN-04-2008 01:52PM FRI
ELAPSED TIME : 00' 30"
MODE : STD ECM
RESULTS : [O.K]

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION
LEGAL DIVISION

595 MARKET STREET, SUITE 1700
SAN FRANCISCO, CA 94105
P. O. BOX 7444, SAN FRANCISCO, CA 94120-7444
PHONE (415) 904-5700
FAX (415) 904-2333
TTY 711



*Flex your power!
Be energy efficient!*

January 4, 2008

Via Facsimile and U.S. Mail
(707) 526-5895

Ms. Rose Zoia
Law Offices of Rose M. Zoia
50 Old Courthouse Square, Suite 401
Santa Rosa, CA 95404

In re: *Rohnert Park Citizens to Enforce CEQA v. STATE OF CALIFORNIA*
United States District Court for the North District of California,
Case No. USC'D C07 4607 TEH

Dear Ms. Zoia:

Based on the Court's December 18, 2007 Case Management Order and in the interests of judicial economy, our meet and confer discussion resulted in an agreement that the State will not file its motion to dismiss or any other responsive pleading until after the early mediation is concluded. Petitioners have also agreed that they will not take the default of the State in the meantime. If necessary, the State will file its motion to dismiss and set a hearing after concluding the mediation sessions. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Janet Wong'.

Janet Wong
Deputy Attorney

cc: Charles O'Connor
Assistant U.S. Attorney

1
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4
5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8
9 ROHNERT PARK CITIZENS TO
10 ENFORCE CEQA,

11 Plaintiff,

12 v.

13 CALIFORNIA DEPARTMENT OF
14 TRANSPORTATION, et al.,

15 Defendants.

NO. C07-4607 TEH

CASE MANAGEMENT ORDER
AND ORDER REFERRING
CASE TO MEDIATION

16 Pursuant to the parties' stipulation during the December 6, 2007 alternative dispute
17 resolution ("ADR") phone conference, this matter is HEREBY REFERRED to the ADR
18 program office for mediation. Mediation shall be completed within ninety calendar days of
19 the date of this order.

20 At the December 10, 2007 case management conference, Defendant California
21 Department of Transportation stated its intention to file a motion to dismiss on January 16,
22 2008, noticed for hearing on March 3, 2008. The parties shall meet and confer to discuss
23 whether it would be efficient for the parties to brief, and the Court to hear, this motion
24 pending mediation.

25 Also at the December 10, 2007 case management conference, the Court discussed
26 with the parties potential briefing schedules for dispositive motions. The Court finds it
27 would be inefficient and counterproductive for such briefing to occur while mediation
28 remains pending. Accordingly, IT IS HEREBY ORDERED that, if this case does not settle

1 at mediation, the parties shall meet and confer and file a joint case management statement on
2 or before **March 24, 2008**, and, unless otherwise ordered, shall appear for a further case
3 management conference on **March 31, 2008, at 1:30 PM.**

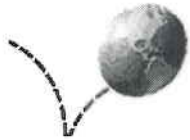
4
5 **IT IS SO ORDERED.**

6
7 Dated: 12/18/07



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT E



Janet
Wong/D04/Caltrans/CAGov
01/02/2008 03:12 PM

To "Rose Zoia" <rzoia@sbcglobal.net>
cc "Gainer, Brett" <Brett.Gainer@fhwa.dot.gov>, "O'Connor,
Charles \USACAN\" <Charles.OConnor@usdoj.gov>, "Lois
Yoshida" <lois_yoshida@dot.ca.gov>
bcc

Subject Re: Meet and Confer--Rohnert Park Citizens Group

Rose: I will send you a letter confirming this understanding, and that Petitioners will not take the State's default since the motion will be delayed pending mediation. We will not need to have a conference on Monday. I will await further communications from you to set the mediation date. Thank you.
Janet Wong

CONFIDENTIALITY NOTICE

This is a privileged attorney-client/attorney work-product communication. It is for the sole use of the intended recipient(s). Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.
Do not print, copy or forward.

"Rose Zoia" <rzoia@sbcglobal.net>



"Rose Zoia"
<rzoia@sbcglobal.net>
01/02/2008 03:00 PM

To "Janet Wong" <janet_wong@dot.ca.gov>
cc "Lois Yoshida" <lois_yoshida@dot.ca.gov>, "O'Connor,
Charles \USACAN\" <Charles.OConnor@usdoj.gov>,
"Gainer, Brett" <Brett.Gainer@fhwa.dot.gov>
Subject Re: Meet and Confer--Rohnert Park Citizens Group

Janet,

Petitioner agrees with your logical suggestion - to complete the mediation before the State files the motion to dismiss.

Thank you,
Rose

----- Original Message -----

From: "Janet Wong" <janet_wong@dot.ca.gov>
To: "Rose Zoia" <rzoia@sbcglobal.net>
Cc: "Gainer, Brett" <Brett.Gainer@fhwa.dot.gov>; "O'Connor, Charles (USACAN)" <Charles.OConnor@usdoj.gov>; "Lois Yoshida" <lois_yoshida@dot.ca.gov>
Sent: Wednesday, January 02, 2008 2:53 PM
Subject: Re: Meet and Confer--Rohnert Park Citizens Group

> Rose: Monday would be fine. How about 10:00 a.m. for the call? I can
> conference in all the parties.
> However, to expedite matters in the interim, we can begin a dialogue by
> email on the issue. If we can make a decision, the call may not be
> necessary.
>
> In the case management conference order, Judge Henderson stated "The

> parties shall meet and confer to discuss whether it would be efficient for
> the parties to brief, and the Court to hear, this motion pending
> mediation."

>
> Based upon that suggestion, one proposal is to hold off on the filing and
> the hearing of the State's motion to dismiss until there has been a chance
> to go through mediation, which has to be completed by March 17. If
> Petitioners will not take the default of the State, we can wait until
> after
> March 17 to file our motion to dismiss and then set the earliest hearing
> date after that. If that is not agreeable, then we will proceed to file
> the motion by January 16 and have the hearing set for March 3. We are
> open
> to any other suggestions that the parties may have.

> Thank you.

>
> Janet Wong
> Deputy Attorney
> Department of Transportation
> (415)904-5678

> (Embedded image moved to file: pic30029.gif)

>
> "Rose Zoia"
> <rzoia@sbcglobal.
> net> To
> "Janet Wong"
> 01/02/2008 02:38 <janet_wong@dot.ca.gov>
> PM cc
> "Gainer, Brett"
> <Brett.Gainer@fhwa.dot.gov>,
> "O'Connor, Charles \\\(USACAN\\)"
> <Charles.OConnor@usdoj.gov>, "Lois
> Yoshida" <lois_yoshida@dot.ca.gov>
> Subject
> Re: Meet and Confer--Rohnert Park
> Citizens Group

> Janet, and counsel:

> Happy New Year to you all.

>

> I am best available next week, Monday would work. My husband is having
> knee
> surgery as I write, so it's best that I'm around for the next few days.
> Is

>
> Monday too late Janet? If so, I can make it work this week.

>
> Rose

>
> ----- Original Message -----

> From: "Janet Wong" <janet_wong@dot.ca.gov>
> To: "Rose Zoia" <rzoia@sbcglobal.net>
> Cc: "Gainer, Brett" <Brett.Gainer@fhwa.dot.gov>; "O'Connor, Charles
> (USACAN)" <Charles.OConnor@usdoj.gov>; "Lois Yoshida"
> <lois_yoshida@dot.ca.gov>
> Sent: Wednesday, January 02, 2008 1:07 PM
> Subject: Re: Meet and Confer--Rohnert Park Citizens Group

>
>
>> Ms. Zoia and counsel: Happy Holidays to you all. Pursuant to the Court's
>> case management conference order, I would like to meet and confer with
>> Petitioner's counsel regarding the State's motion. I would like to
>> conduct
>> the meet and confer as soon as possible since the State's motion will be
>> filed by January 16th. Please let me know when you would be available.
>> Although the meet and confer mainly involves the issues on the State's
>> motion, the federal defendants are welcome to join the conference. Thank
>> you.

>>
>> Janet Wong
>> Deputy Attorney
>> Department of Transportation
>> (415)904-5678

>>
>>
>> (Embedded image moved to file: pic11765.gif)

>
>

Case Name: *Rohnert Park Citizens, et al. v. Department of Transportation, et al.*,
Case No.: Northern District Court No. C 07 4607 TEH

PROOF OF SERVICE

I, the undersigned, say: I am, and was at all times herein mentioned, employed in the City and County of San Francisco, over the age of 18 years and not a party to the within action or proceedings; that my business address is 595 Market Street, Suite 1700, P.O. Box 7444, San Francisco, California 94120-7444; that on the date set forth below, I served the within

DECLARATION OF JANET WONG IN SUPPORT OF DEFENDANT STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION'S REPLY IN SUPPORT OF MOTION TO DISMISS [FRCP RULE 12(b)(1)]

on all parties in said action by:

— (MAIL) by placing a true copy thereof enclosed in a sealed envelope for each person(s) named below, addressed as set forth immediately below the respective name(s), with postage thereon fully prepaid as first-class mail. I deposited the same in a mailing facility regularly maintained by the United States Post Office for the mailing of letter(s) at my above-stated place of business.

— (PERSONAL SERVICE) by placing a true copy thereof enclosed in a sealed envelope, for each person(s) named below, and caused such envelope to be delivered by hand to the address(es) as set forth immediately below the respective name(s) pursuant to this Proof of Service.

— (FACSIMILE TRANSMITTAL) by faxing a true copy thereof as indicating by the address(es), and facsimile telephone number(s) for each person(s) named below as set forth immediately below the respective name(s) pursuant to this Proof of Service.

X (OVERNIGHT DELIVERY) By placing a true copy thereof, enclosed in a sealed envelope, with delivery charges to be billed to the office of the State of California, Department of Transportation, to be delivered by Express Mail, to the address(es) shown below.

Rose M. Zoia
 50 Old Courthouse Square, Suite 600
 Santa Rosa, CA 95404
 Telephone # (707) 526-5894

Charles M. O'Connor
 Assistant United States Attorney
 450 Golden Gate Avenue, 9th Floor
 San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 19, 2008, at San Francisco, California.


 FRANCIA AQUINO, Declarant